

## **EXHIBIT 1**

1 HAROLD P. GEWERTER, ESQ.  
2 Nevada Bar No. 499  
3 HAROLD P. GEWERTER, ESQ., LTD.  
4 2705 Airport Drive  
5 North Las Vegas, Nevada 89032  
6 Office: (702) 382-1714  
7 Fax: (702) 382-1759  
8 Attorney for Defendant

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 \* \* \* \* \*

12 GERALD HESTER, on behalf of himself and  
13 all others similarly situated,

14 Plaintiff,

15 vs.

16 VISION AIRLINES, INC.,

17 Defendant.

CASE NO.: 2:09-CV-00117-RLH-RJJ

18 **DEFENDANT VISION AIRLINES, INC.'S**  
19 **THIRD SUPPLEMENTAL RESPONSES**  
20 **TO PLAINTIFF'S FIRST REQUEST FOR**  
21 **PRODUCTION**

22 Without waiving Defendant VISION AIRLINES, INC.'s objections contained in  
23 DEFENDANT VISION AIRLINES, INC.'S RESPONSES TO PLAINTIFF'S FIRST  
24 REQUEST FOR PRODUCTION, Defendant VISION AIRLINES, INC. hereby provides the  
25 following Third Supplemental Responses to Plaintiff's First Request for Production. These  
26 responses are to Plaintiff's narrowed requests as per their letter of December 21, 2009.

27 This material is mainly responsive to Request No. 15, however, it is also partially  
28 responsive to Requests No's. 9 and 12.

**Narrowed Request 15:** We request that Vision provide us with a list of all  
Airbridge Program employees, indicating their dates of employment, position, mailing  
address, and telephone number.


///

///

1 See Bates Stamped No's. HEST0031247 to HEST0033541 (CD-ROM).

2 DATED this 22 day of January, 2010.

3 HAROLD P. GEWERTER, ESQ., LTD.

4   
5 HAROLD P. GEWERTER, ESQ.  
6 Nevada Bar No. 499  
7 2705 Airport Drive  
8 North Las Vegas, Nevada 89032  
9 Attorney for Defendant

10 **CERTIFICATE OF SERVICE**

11 Certification is hereby made that a true and correct copy of the foregoing Defendant  
12 Vision Airlines, Inc.'s Third Supplemental Responses to Plaintiffs First Request for Production  
13 of Documents was served this 22<sup>nd</sup> day of January, 2010, in the following manner:

14   X   By being placed into an envelope bearing First Class Postage and placed into the  
15 U.S. Mails, this same date, addressed to the following individuals; and/or

16        By being hand delivered to the following individuals at their last known address,  
17 this same date, as follows; and/or

18        By being served via facsimile to the following individuals at their last known  
19 facsimile number, this same date, as follows:

20  
21 **Via Federal Express**  
22 DAVID M. BUCKNER, ESQ.  
23 2525 Ponce de Leon, 9<sup>th</sup> Floor  
Coral Gables, FL 33134

**Via Regular U.S. Mail w/o Enclosure**  
Ross C. Goodman, Esq.  
520 S Fourth Street  
Las Vegas, NV 89101

24 Attorneys for Plaintiffs

25   
26 An employee of Harold P. Gewerter, Esq., Ltd.  
27  
28

## **EXHIBIT 2**

1 HAROLD P. GEWERTER, ESQ.  
2 Nevada Bar No. 499  
3 HAROLD P. GEWERTER, ESQ., LTD.  
4 2705 Airport Drive  
5 North Las Vegas, Nevada 89032  
6 Office: (702) 382-1714  
7 Fax: (702) 382-1759  
8 Attorney for Defendant

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 \* \* \* \* \*

12 GERALD HESTER, on behalf of himself and  
13 all others similarly situated,

14 Plaintiff,

15 vs.

16 VISION AIRLINES, INC.,

17 Defendant.

CASE NO.: 2:09-CV-00117-RLH-RJJ

18 **DEFENDANT VISION AIRLINES, INC.'S  
19 THIRD SUPPLEMENTAL RESPONSES  
20 TO PLAINTIFF'S FIRST REQUEST FOR  
21 PRODUCTION**

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24 REQUEST FOR PRODUCTION, Defendant VISION AIRLINES, INC. hereby provides the  
25 following Third Supplemental Responses to Plaintiff's First Request for Production. These  
26 responses are to Plaintiff's narrowed requests as per their letter of December 21, 2009.

27 This material is mainly responsive to Request No. 15, however, it is also partially  
28 responsive to Requests No's. 9 and 12.

29 **Narrowed Request 15: We request that Vision provide us with a list of all  
30 Airbridge Program employees, indicating their dates of employment, position, mailing  
31 address, and telephone number.**

32 ///

33 ///



1 See Bates Stamped No's. HEST0030499 to HEST0031246 (CD-ROM).

2 DATED this 14 day of January, 2010.

3 HAROLD P. GEWERTER, ESQ., LTD.

4   
5 HAROLD P. GEWERTER, ESQ.

6 Nevada Bar No. 499

7 2705 Airport Drive

8 North Las Vegas, Nevada 89032

9 Attorney for Defendant

10 **CERTIFICATE OF SERVICE**

11 Certification is hereby made that a true and correct copy of the foregoing Defendant  
12 Vision Airlines, Inc.'s Third Supplemental Responses to Plaintiffs First Request for Production  
13 of Documents was served this 14th day of January, 2010, in the following manner:

14   X   By being placed into an envelope bearing First Class Postage and placed into the  
15 U.S. Mails, this same date, addressed to the following individuals; and/or

16        By being hand delivered to the following individuals at their last known address,  
17 this same date, as follows; and/or

18        By being served via facsimile to the following individuals at their last known  
19 facsimile number, this same date, as follows:

21 **Via Federal Express**  
22 DAVID M. BUCKNER, ESQ.  
23 2525 Ponce de Leon, 9<sup>th</sup> Floor  
Coral Gables, FL 33134

24 Attorneys for Plaintiffs

**Via Regular U.S. Mail w/o Enclosure**  
Ross C. Goodman, Esq.  
520 S Fourth Street  
Las Vegas, NV 89101

25   
26 An employee of Harold P. Gewerter, Esq., Ltd.  
27  
28

## **EXHIBIT 3**

1 HAROLD P. GEWERTER, ESQ.  
2 Nevada Bar No. 499  
3 HAROLD P. GEWERTER, ESQ., LTD.  
4 2705 Airport Drive  
5 North Las Vegas, Nevada 89032  
6 Office: (702) 382-1714  
7 Fax: (702) 382-1759  
8 Attorney for Defendant

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 \* \* \* \* \*

12 GERALD HESTER, on behalf of himself and  
13 all others similarly situated,

14 Plaintiff,

15 vs.

16 VISION AIRLINES, INC.,

17 Defendant.

CASE NO.: 2:09-CV-00117-RLH-RJJ

18 **DEFENDANT VISION AIRLINES, INC.'S**  
19 **THIRD SUPPLEMENTAL RESPONSES**  
20 **TO PLAINTIFF'S FIRST REQUEST FOR**  
21 **PRODUCTION**

22 Without waiving Defendant VISION AIRLINES, INC.'s objections contained in  
23 DEFENDANT VISION AIRLINES, INC.'S RESPONSES TO PLAINTIFF'S FIRST  
24 REQUEST FOR PRODUCTION, Defendant VISION AIRLINES, INC. hereby provides the  
25 following Third Supplemental Responses to Plaintiff's First Request for Production. These  
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27 This material is mainly responsive to Request No. 15, however, it is also partially  
28 responsive to Requests No's. 9 and 12.

29 **Narrowed Request 15: We request that Vision provide us with a list of all**  
30 **Airbridge Program employees, indicating their dates of employment, position, mailing**  
31 **address, and telephone number.**

32 ///


33 ///



See Bates Stamped No's. HEST0030001 to HEST0030498 (CD-ROM).

DATED this 12 day of January, 2010.

HAROLD P. GEWERTER, ESQ., LTD.

  
HAROLD P. GEWERTER, ESQ.  
Nevada Bar No. 499  
2705 Airport Drive  
North Las Vegas, Nevada 89032  
Attorney for Defendant

### CERTIFICATE OF SERVICE

Certification is hereby made that a true and correct copy of the foregoing Defendant Vision Airlines, Inc.'s Third Supplemental Responses to Plaintiffs First Request for Production of Documents was served this 12<sup>th</sup> day of January, 2010, in the following manner:

  X   By being placed into an envelope bearing First Class Postage and placed into the U.S. Mails, this same date, addressed to the following individuals; and/or

       By being hand delivered to the following individuals at their last known address, this same date, as follows; and/or

       By being served via facsimile to the following individuals at their last known facsimile number, this same date, as follows:

**Via Federal Express**  
DAVID M. BUCKNER, ESQ.  
2525 Ponce de Leon, 9<sup>th</sup> Floor  
Coral Gables, FL 33134

Attorneys for Plaintiffs

**Via Regular U.S. Mail w/o Enclosure**  
Ross C. Goodman, Esq.  
520 S Fourth Street  
Las Vegas, NV 89101

  
An employee of Harold P. Geworter, Esq., Ltd.

## **EXHIBIT 4**

1 HAROLD P. GEWERTER, ESQ.  
2 Nevada Bar No. 499  
3 HAROLD P. GEWERTER, ESQ., LTD.  
4 2705 Airport Drive  
5 North Las Vegas, Nevada 89032  
6 Office: (702) 382-1714  
7 Fax: (702) 382-1759  
8 Attorney for Defendant

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 \* \* \* \* \*

12 GERALD HESTER, on behalf of himself and , CASE NO.: 2:09-CV-00117-RLH-RJJ  
13 all others similarly situated.

14 Plaintiff,

15 vs.

16 **DEFENDANT VISION AIRLINES, INC.'S  
17 RESPONSES TO PLAINTIFF'S FIRST  
18 REQUEST FOR PRODUCTION**

19 VISION AIRLINES, INC.,

20 Defendant.

21 All the items produced pursuant to this Defendant Vision Airlines, Inc.'s Responses to  
22 Plaintiff's First Request for Production are hereby designated "CONFIDENTIAL ATTORNEYS  
23 ONLY" as defined in the Protective Order filed in this matter on or about March 20, 2009.

24 **GENERAL OBJECTIONS**

25 1. Defendant objects to Plaintiff's "Instructions" and "Definitions" to the extent they  
26 purport to impose discovery obligations that differ from or exceed the discovery obligations  
27 imposed by the Federal Rules of Civil Procedure.

28 2. Defendant objects to the Requests for Production of Documents to the extent that  
they seek information protected by the attorney-client privilege, the work-product privilege, or  
any other privilege, protection, or immunity applicable under the governing law.

3. Defendant objects to the Requests for Production of Documents to the extent that  
they are overly broad, unduly burdensome, oppressive, and/or seek information that is not

relevant to the issues in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence.

4. These General Objections are made, to the extent applicable, in response to each of the Requests for Production of Documents as if the objections were fully set forth therein.

5. Defendant responds to each of the Requests for Production of Documents based upon information and documentation available as of the date hereof and reserves the right to supplement and amend their responses.

#### REQUEST NO. 1:

All communications and documents that relate to hazard pay.

#### RESPONSE NO. 1:

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been in business) and does not limit its scope to Iraq and Afghanistan which are the subjects of this case, as alleged in Plaintiff's Complaint.

Further Objection. This request violates the *Reynolds* doctrine as set forth in *United States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952) which creates a privilege for in which the "danger that compulsion of evidence will expose military matters which, in the interest of national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed, expanded and explained recently in *Mohamed v. Jeppsen*, 9<sup>th</sup> Cir. Court of Appeals, Case No. 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any evidence sought to be excluded to determine whether its contents are secret within the meaning of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate, however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires "simply that the evidence is unavailable, as though a witness had died [or a document had been destroyed], and the case will proceed accordingly, with no consequences save those resulting



1 from the loss of evidence.” *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709  
 2 F.2d 51, 64 (D.C. Cir. 1983)).

3 Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED  
 4 STATES under which Plaintiff explicitly consents to being governed by a number of statutes  
 5 which protect against disclosure that may compromise the national security including but not  
 6 limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt  
 7 to copy, take, make, or obtain, any sketch, photograph, document, writing, or note of anything  
 8 connected to the national defense, §798 of Title 18 of the United States Code which makes it a  
 9 crime to disclose classified information concerning the communication intelligence activities of  
 10 the United States or any foreign government, and §1924 of Title 18 of the United States Code  
 11 which makes it a crime to remove or retain classified documents or material if such material has  
 12 been gained by virtue of one’s office, employment, position or contract.

13 Notwithstanding the objection, Defendant has no documents or communications relating  
 14 to “hazard pay” as set forth in Plaintiff’s Request.

15 **REQUEST NO. 2:**

16 All contracts between or among any of Vision, Capital Aviation, CSC or McNeil that  
 17 relate to the provision of air transport services to Iraq or Afghanistan.

18 **RESPONSE NO. 2:**

19 See Response 2 attached hereto (12 pages).

20 **REQUEST NO. 3:**

21 All documents including, but not limited to, any bids or proposals that relate to any or all  
 22 of the contracts between or among any of Vision, Capital Aviation, CSC or McNeil for the  
 23 provision of air transport services to Iraq or Afghanistan.

24 **RESPONSE NO. 3:**

25 See Response 3 attached hereto (18 pages).



**REQUEST NO. 4:**

All communications to, from, or among Vision, Capital Aviation, CSC or McNeil, that relate to the provision of air transport services to Iraq or Afghanistan, including, but not limited to, communications about hazard pay.

**RESPONSE NO. 4:**

See Response 3 attached hereto (18 pages).

**REQUEST NO. 5:**

All contracts and associated documents, including but not limited to, all requests for proposal, bids, proposal and drafts, with any branch, corporation, agency or division of or controlled by the United States government relating to the provision of air transport services to Iraq or Afghanistan.

**RESPONSE NO. 5:**

Defendant has no documents responsive to the above request.

**REQUEST NO. 6:**

All documents that relate to any contract with any branch, corporation, division or agency of or controlled by the United States government relating to the provision of air transport services to Iraq or Afghanistan.

**RESPONSE NO. 6:**

Defendant has no documents responsive to the above request.

**REQUEST NO. 7:**

All communications to, from or between any branch, corporation, division or agency of or controlled by the United States government, including but not limited to, any affidavits, affirmations, or communications about hazard pay that relate to the provision of air transport services to Iraq or Afghanistan.

**RESPONSE NO. 7:**

Defendant has no documents responsive to the above request.

**REQUEST NO. 8:**

All documents and communications that relate in any way to the compensation of flight crews operating flights to or from Iraq or Afghanistan, including but not limited to, all documents and communications that relate to hazard pay or any compensation specifically related to personnel flying to or from Iraq or Afghanistan. Such documents and communications should include invoices to, from, or among Capital Aviation, CSC, McNeil or Vision, and any bids or proposals.

**RESPONSE NO. 8:**

Objection. This request is beyond the scope of permissible discovery and is overly burdensome. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been providing such services).

Notwithstanding the objection, see Response 8 attached hereto (20 pages).

**REQUEST NO. 9:**

All documents and communications that relate to the flights Vision operated to or from Iraq and Afghanistan, including but not limited to flight plans, flight records, schedules and lists of flight personnel employed as crew member on those flights.

**RESPONSE NO. 9:**

Objection. This request is beyond the scope of permissible discovery and is overly burdensome. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been providing such services). It would also include transcripts of communications with airport towers, flight controllers for every flight going back four (4) years.

Further Objection. This request violates the *Reynolds* doctrine as set forth in *United States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952), which creates a privilege for in which the "danger that compulsion of evidence will expose military matters which, in the interest of national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed.

expanded and explained recently in *Mohamed v. Jeppesen*, 9<sup>th</sup> Cir. Court of Appeals, Case No. 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any evidence sought to be excluded to determine whether its contents are secret within the meaning of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate, however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires "simply that the evidence is unavailable, as though a witness had died [or a document had been destroyed], and the case will proceed accordingly, with no consequences save those resulting from the loss of evidence.'" *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709 F.2d 51, 64 (D.C. Cir. 1983)).

Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED STATES under which Plaintiff explicitly consents to being governed by a number of statutes which protect against disclosure that may compromise the national security including but not limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt to copy, take, make, or obtain, any sketch, photograph, document, writing, or note of anything connected to the national defense, §798 of Title 18 of the United States Code which makes it a crime to disclose classified information concerning the communication intelligence activities of the United States or any foreign government, and §1924 of Title 18 of the United States Code which makes it a crime to remove or retain classified documents or material if such material has been gained by virtue of one's office, employment, position or contract.

Notwithstanding the objection, see Response 8 attached hereto (20 pages).

#### **REQUEST NO. 10:**

All documents and communications, including spreadsheets, invoices, tax returns, receipts and accounting records, that relate to Capital Aviation, CSC or McNeil's payments to Vision for air transport services to Iraq or Afghanistan, including but not limited to payments for hazard pay.



**RESPONSE NO. 10:**

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been providing such services).

Not withstanding the objection, see Response 8 attached hereto (20 pages).

**REQUEST NO. 11:**

All documents and communications to, from, or between Dan Carson and CSC, Capital Aviation, Vision or McNeil that relate to the provision of air transport services to Iraq or Afghanistan, including but not limited to communications about hazard pay.

**RESPONSE NO. 11:**

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been providing such services).

Not withstanding the objection, see Response 8 attached hereto (20 pages).

**REQUEST NO. 12:**

All documents that relate to any and all payments or compensation that Vision made to its employees who served as crew on flights to or from Iraq or Afghanistan, including but not limited to documents that relate to payments for salary, hazard pay and reimbursement.

**RESPONSE NO. 12:**

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been providing such services).

Not withstanding the objection, see attached Response 12 (19 pages).

**REQUEST NO. 13:**

All documents and communications that relate to any compensation Vision provided its flight crew employees, including pay scales, pay plans, charts, notices, accounting spreadsheets, payrolls, timesheets, and flight records.

**RESPONSE NO. 13:**

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (D.C. Cir. 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been in business) and does not limit its scope to Iraq and Afghanistan which are the subjects of this case.

Further Objection. This request violates the *Reynolds* doctrine as set forth in *United States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952) which creates a privilege for in which the "danger that compulsion of evidence will expose military matters which, in the interest of national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed, expanded and explained recently in *Mohamed v. Jeppsen*, 9<sup>th</sup> Cir. Court of Appeals, Case No. 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any evidence sought to be excluded to determine whether its contents are secret within the meaning of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate, however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires "simply that the evidence is unavailable, as though a witness had died [or a document had been destroyed], and the case will proceed accordingly, with no consequences save those resulting from the loss of evidence.'" *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709 F.2d 51, 64 (D.C. Cir. 1983)).

Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED STATES under which Plaintiff explicitly consents to being governed by a number of statutes which protect against disclosure that may compromise the national security including but not



limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt to copy, take, make, or obtain, any sketch, photograph, document, writing, or note of anything connected to the national defense, §798 of Title 18 of the United States Code which makes it a crime to disclose classified information concerning the communication intelligence activities of the United States or any foreign government, and §1924 of Title 18 of the United States Code which makes it a crime to remove or retain classified documents or material if such material has been gained by virtue of one's office, employment, position or contract.

Notwithstanding the objection, see attached Responses 12 (19 pages) and 15 (270 pages).

**REQUEST NO. 14:**

Documents sufficient to describe the corporate structure of Vision Airlines, Inc., Vision Holidays, Inc., Vision Coach, Inc. and Vision Aviation Holdings, Inc., including all documents that describe or reflect (i) the ownership of Vision Airlines, Inc., Vision Holidays, Inc., Vision Coach, Inc. and Vision Aviation Holdings, (ii) the identity of the officers, directors, employees or agents of Vision Airlines, Inc., Vision Holidays, Inc., Vision Coach, Inc. and Vision Aviation Holdings, Inc., and (iii) the formation of Vision Airlines, Inc., Vision Holidays, Inc., Vision Coach, Inc. and Vision Aviation Holdings, Inc.

**RESPONSE NO. 14:**

Nevada Secretary of State printouts are attached along with organizational chart (12 pages).

**REQUEST NO. 15:**

All of Vision's employee personnel files for any and all employees involved in any way with flights to or from Iraq or Afghanistan.

**RESPONSE NO. 15:**

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been in business) further this request is overly broad as it would include nearly

every employee of Plaintiff as they have all answered phones, delivered packages, repaired parts, swept runways which may in some way be related to flights to or from Iraq or Afghanistan also the request is not limited to such involvement while in Plaintiff's employment.

Further Objection. This request violates the *Reynolds* doctrine as set forth in *United States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952) which creates a privilege for in which the "danger that compulsion of evidence will expose military matters which, in the interest of national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed, expanded and explained recently in *Mohamed v. Jeppsen*, 9<sup>th</sup> Cir. Court of Appeals, Case No. 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any evidence sought to be excluded to determine whether its contents are secret within the meaning of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate, however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires "simply that the evidence is unavailable, as though a witness had died [or a document had been destroyed], and the case will proceed accordingly, with no consequences save those resulting from the loss of evidence." *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709 F.2d 51, 64 (D.C. Cir. 1983)).

Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED STATES under which Plaintiff explicitly consents to being governed by a number of statutes which protect against disclosure that may compromise the national security including but not limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt to copy, take, make, or obtain, any sketch, photograph...document, writing, or note of anything connected to the national defense, §798 of Title 18 of the United States Code which makes it a crime to disclose classified information concerning the communication intelligence activities of the United States or any foreign government, and §1924 of Title 18 of the United States Code which makes it a crime to remove or retain classified documents or material if such material has been gained by virtue of one's office, employment, position or contract.

1 Notwithstanding the objection, see attached Response 15 (270 pages).

2 **REQUEST NO. 16:**

3 Documents sufficient to identify all Vision Employees who worked as crew members,  
4 including but not limited to captains, first officers, international relief officers, cruise pilots,  
5 flight attendants and mechanics on the flights to or from Iraq or Afghanistan.

6 **RESPONSE NO. 16:**

7 See attached Responses 12 (19 pages) and 15 (270 pages).

8 **REQUEST NO. 17:**

9 Visions state and federal tax returns from 2004 through 2008.

10 **RESPONSE NO. 17:**

11 Objection. This request is beyond the scope of permissible discovery. See, e.g. *United*  
12 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). There is no relation between the  
13 overall income of Defendants and whether Plaintiff was paid hazard pay which is the sole subject  
14 of this case. This information is also privileged.

15 **REQUEST NO. 18:**

16 All documents that relate to the duties, obligations and responsibilities of Vision to its  
17 employees.

18 **RESPONSE NO. 18:**

19 Objection. This request is beyond the scope of permissible discovery. See, e.g. *United*  
20 *States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request  
21 are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the  
22 Defendant has been providing such services) and further this request would involve turning over  
23 handbooks, flight manuals, instruction manuals, safety manuals, training manuals for 1000's of  
24 employees during the scope of Defendants existence.

25 Notwithstanding the objection, see Response 12 attached hereto (19 pages).

26 **REQUEST NO. 19:**

27 All documents that relate to the calculation and basis for any fee charged by Vision to  
28 Capital Aviation, McNeil, CSC, any United States government agency, corporation, division or



department or any other contractor for providing air transport services to or from Iraq and Afghanistan.

**RESPONSE NO. 19:**

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir. 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been providing such services).

Further Objection. This request violates the *Reynolds* doctrine as set forth in *United States v. Reynolds*, 345 U.S. 1, 73 S. Ct. 528 (1952), which creates a privilege for in which the "danger that compulsion of evidence will expose military matters which, in the interest of national security should not be divulged" *Id.* at 9-10. The authority of *Reynolds* was affirmed, expanded and explained recently in *Mohamed v. Jeppsen*, 9<sup>th</sup> Cir. Court of Appeals, Case No. 08-15693 (filed April 28, 2009). "Courts must undertake an independent evaluation of any evidence sought to be excluded to determine whether its contents are secret within the meaning of the privilege." *Id.* at 4944. "Once the court determines a claim of privilege is legitimate, however, "even the most compelling [personal] necessity cannot overcome" it." *Id.* at 4933 quoting *Reynolds*, 345 U.S. at 11. "Successful invocation of the *Reynolds* privilege does not necessarily require dismissal of the entire suit. Instead, invocation of the privilege requires "simply that the evidence is unavailable, as though a witness had died [or a document had been destroyed], and the case will proceed accordingly, with no consequences save those resulting from the loss of evidence."" *Al-Haramain*, 507 F.3d at 1204 (quoting *Ellsberg v. Mitchell*, 709 F.2d 51, 64 (D.C. Cir. 1983)).

Plaintiff has signed a Classified Information Nondisclosure Agreement with the UNITED STATES under which Plaintiff explicitly consents to being governed by a number of statutes which protect against disclosure that may compromise the national security including but not limited to §793 of Title 18 of the United States Code which makes it a crime to obtain, or attempt to copy, take, make, or obtain, any sketch, photograph...document, writing, or note of anything connected to the national defense, §798 of Title 18 of the United States Code which makes it a

crime to disclose classified information concerning the communication intelligence activities of the United States or any foreign government, and §1924 of Title 18 of the United States Code which makes it a crime to remove or retain classified documents or material if such material has been gained by virtue of one's office, employment, position or contract.

Notwithstanding the objection, see Response 4 attached hereto (18 pages).

**REQUEST NO. 20:**

All documents that relate to any fee, money, or other form of remuneration Vision received for providing air transport services to or from Iraq and Afghanistan.

**RESPONSE NO. 20:**

Objection. This request is beyond the scope of permissible discovery. See, e.g., *United States v. Philip Morris, Inc.*, 347 F.3d 951 (DC Cir 2003). The time limitations on the request are vague and ambiguous (Plaintiff was only employed for a small percentage of the time the Defendant has been providing such services).

Notwithstanding the objection, see Response 4 attached hereto (18 pages).

**REQUEST NO. 21:**

All documents related to any defense Vision might offer to the allegations or causes of action in the Complaint.

**RESPONSE NO. 21:**

See attached Responses including Pilot Pay Comparison Analysis labeled Response 21 (18 pages). Defendant responds to each of the Requests for Production of Documents based upon information and documentation available as of the date hereof and reserves the right to supplement and amend their responses.

**REQUEST NO. 22:**

All documents referenced or described in Vision's Motion to Dismiss, Reply in Support of Vision's Motion to Dismiss, Initial Disclosures, or Answer.

**RESPONSE NO. 22:**

See attached Response 15 (270 pages).



Defendant responds to each of the Requests for Production of Documents based upon information and documentation available as of the date hereof and reserves the right to supplement and amend their responses.

DATED this 8 day of May, 2009.

HAROLD P. GEWERTER, ESQ., LTD.



HAROLD P. GEWERTER, ESQ.

Nevada Bar No. 499

2705 Airport Drive

North Las Vegas, Nevada 89032

Attorney for Defendant

**CERTIFICATE OF SERVICE**

Certification is hereby made that a true and correct copy of the foregoing Defendant Vision Airlines, Inc.'s Responses to Plaintiff's First Request for Production of Documents was served this 8<sup>th</sup> day of May, 2009, in the following manner:

☒ By being placed into an envelope bearing First Class Postage and placed into the U.S. Mails, this same date, addressed to the following individuals: and/or


☐ By being hand delivered to the following individuals at their last known address, this same date, as follows; and/or

☐ By being served via facsimile to the following individuals at their last known facsimile number, this same date, as follows:

**Via Federal Express**  
DAVID M. BUCKNER, ESQ.  
2525 Ponce de Leon, 9<sup>th</sup> Floor  
Coral Gables, FL 33134

Attorneys for Plaintiffs

**Via Regular U.S. Mail**  
Ross C. Goodman, Esq.  
520 S Fourth Street  
Las Vegas, NV 89101



An employee of Harold P. Gewerter, Esq., Ltd.

VERIFICATION

STATE OF NEVADA

)

) ss:

COUNTY OF CLARK

)

STEVEN ACOR, being first duly sworn, deposes and says:

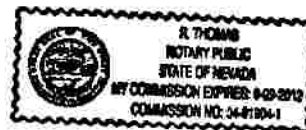
That I am the C.O.O. of Defendant, Vision Airlines, Inc. in the above-entitled action; have read the foregoing Responses To First Set Of Interrogatories, know the contents thereof; and that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, they are believed to be true.

  
STEVEN ACOR

SUBSCRIBED and SWORN to before me  
this 13 day of May, 2009.



NOTARY PUBLIC



HAROLD P. GEWERTER, ESQ., LTD.



HAROLD P. GEWERTER, ESQ.

Nevada Bar No. 499

2705 Airport Drive

North Las Vegas, Nevada 89032

Attorney for Defendant

## **EXHIBIT 5**

**LAW OFFICES OF  
HAROLD P. GEWERTER, ESQ., LTD.**

Harold P. Gewerter, Esq.

February 2, 2010

**Via Facsimile: 305-372-3508  
and Regular Mail**

David M. Buckner, Esq.  
Brett Von Borke, Esq.  
2525 Ponce de Leon, 9<sup>th</sup> Floor  
Coral Gables, FL 33134

**Re: Vision Airlines adv. Hester, et al  
Case No. 09-CV-117-RLH-RJJ**

Dear Gentlemen:

This letter is in response to your letter dated February 1, 2010. Several weeks ago you received nearly all of the documents which Vision promised to produce by January 7, 2010. As we discussed after the hearing on January 22, 2010, Vision is preparing a comprehensive package correlating payroll records concerning each individual flight. We have been informed we can expect to receive this material on or around March 5, 2010. Thus, based upon this estimate and given time for copying and bate stamping I would anticipate these additional materials being delivered to you around March 10, 2010.

To date, however, you have received a complete list of all potential class members, including contact information, along with pertinent portions of their personnel files. You have also received an electronic version of payroll information from 2007 until the current date, and hard copies from May 5, 2005 to 2007.

As for the remaining 30(b)(6) depositions, I am informed that my clients are available in the middle of March. Please give me alternate dates so we can verify specific days in the middle of March for availability. Also, is Mr. Hester also going to be available for his deposition at the same time?

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2705 Airport Drive, North Las Vegas, Nevada 89032  
Telephone: (702) 382-1714 ♦ Facsimile: (702) 382-1759

Vision adv. Hester  
Page 2  
February 2, 2010

As always, should you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely,

HAROLD P. GEWERTER, ESQ., LTD.

A handwritten signature in black ink, appearing to read 'H. Gewerter', written over the typed name.

Harold P. Gewerter, Esq.

HPG:ma  
cc: Ross Goodman, Esq.  
Client



**LAW OFFICES OF  
HAROLD P. GEWERTER, ESQ., LTD.**

---

FAX COVER SHEET

TO: David M. Buckner, Esq./Brett Von Borke, Esq.

FAX NUMBER: 305-372-3508

TO: Ross Goodman, Esq.

FAX NUMBER: 702-385-5088

FROM: Harold P. Gewerter, Esq.

DATE: February 2, 2010

RE: Vision Airlines adv. Hester, Case No. 09-CV-00117

MESSAGE: Please see attached correspondence.

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Number of pages (including cover): 3. If you do not receive all pages, please call the number below. This transmission is confidential and intended only for the use of the individual to whom it is addressed. If you have received this transmission in error, please call us immediately and mail it to the address below. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

---

2705 Airport Drive, North Las Vegas, Nevada 89032  
Telephone: (702) 382-1714 ♦ Facsimile: (702) 382-1759

HP Color LaserJet CM2320nf MFP

## Fax Confirmation Report

HP LASERJET FAX GEWERTER  
7023821759  
Feb-2-2010 5:50PM

| Job  | Date      | Time      | Type | Identification | Duration | Pages | Result |
|------|-----------|-----------|------|----------------|----------|-------|--------|
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| 2526 | 2/ 2/2010 | 5:49:59PM | Send | 3855088        | 0:53     | 3     | OK     |

**LAW OFFICES OF  
HAROLD P. GEWERTER, ESQ., LTD.**

**FAX COVER SHEET**

TO: David M. Buckner, Esq./New York Office, Esq.  
 FAX NUMBER: 305-572-1308  
 TO: Ross Goodman, Esq.  
 FAX NUMBER: 702-385-3088  
 FROM: Harold P. Gewerter, Esq.  
 DATE: February 2, 2010  
 RE: Vision Altimax, Inc. v. Hester, Case No. 09-CV-00117  
 MESSAGE: Plamps are attached corresponding.

Number of pages (including cover): 3 If you do not receive all pages, please call the number below. This transmission is confidential and intended only for the use of the individual to whom it is addressed. If you have received this transmission in error, please call us immediately and notify us in the address below. If the sender of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

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